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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/520,891

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Paul Alfred Cornwell

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1611

NOTIFICATION DATE

DELIVERY MODE

07/22/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/520,891	Applicant(s) CORNWELL ET AL.	
	Examiner GINA C. YU	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on January 8, 2010. Applicant's remarks are viewed persuasive in part, and claim rejection made under U.S.C. § 102 as being anticipated by Yamamoto et al. (UP407330551 A, translation) is withdrawn.

The finality of the Office action dated October 30, 2009 is hereby withdrawn. A new rejection has been made in view of further consideration.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (JP 407330551 A, translation).

Yamamoto discloses a method of treating and conditioning hair with a hair treatment composition comprising 0.5-50 wt % of an organic solvent consisting of a 5-8 C monohydric aliphatic alcohol, such as 2-methyl-1-pentanol. See [0002], [0023]. The reference teaches the monovalent aliphatic alcohols and/or aromatic alcohols are used to improve the absorption of quaternary ammonium salt in the composition. See [0031]. The purpose of the invention is to prevent damage to hair exposed to dryer, permanent, wave, and hair dye. The use of organic solvent allows hair refining ingredient permeate the inside of the hair. See [0003]. The reference also teaches to make the products in the form of lotion and foam comprising an aqueous base and surfactants. See Examples. Example 19 discloses a hair treatment composition comprising dimethylammonium chloride, dimethylpolysiloxane polymers, cetyl alcohol, and benzyl

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alcohol. The reference teaches that the composition imparts the hair with “sustainable excellent softness” and made in the form of rinse, treatment, hair cream, hair blow. See abstract. Although the present claim recites the hair treatment composition used in the claimed method is “in the form of a leave-on, post wash conditioner”, such form is not patentably distinct from the prior art, which also is in the form of a hair condition treatment to protect hair from damages.

Although the Yamamoto examples contain aromatic alcohol and does not disclose a specific example comprising the aliphatic alcohol of instant claims, the reference teaches that 2-methyl-1-pentanol of instant claims is an art-recognized functional equivalent of the aromatic alcohol used to improve the absorption of the cationic conditioning agent. A mere substitution of one known element for another in a known composition where the substituted element is a art-recognized functional equivalent and performs in a readily predictable manner is not a patentable difference. See KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 416 (2007). Thus, using the aliphatic compounds of Yamamoto such as 2-methyl-1-pentanol in place of the aromatic compounds in the Examples would have been obvious to one of ordinary skill in the art.

Claims 1, 2, 4, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto, as applied to claims 17-19 are above, and further in view of the Hoeffkes (US 4898725 A).

Yamamoto does not disclose the hair protective composition in the form of shampoo.

Hoeffkes teaches that incorporating hair conditioning components to hair rinse or shampoo to make improved products is a well known practice in hair cosmetic art. The prior art teaches adding quaternary ammonium compound to enhance the hair conditioning effect. See col. 5, line 60 - col. 6, line 46. The reference teaches deterative surfactants including anionic surfactants are commonly used in an amount ranging from about 1-25 % by weight of a shampoo. See col. 6, line 50 – 60.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Yamamoto by making a shampoo formulation comprising the hair benefit agents of the prior art, i.e., cationic surfactant and organic solvent, to obtain a shampoo which imparts improved cosmetic properties to hair. Since Yamamoto teaches the use of organic solvent allows hair refining ingredient permeate the inside of the hair, and Hoeffkes teaches hair conditioning products in form of shampoo, the skilled artisan would have had a reasonable expectation of successfully producing a shampoo formulation which effectively delivers the cationic surfactants to hair and thereby conditioning the hair.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4, 13-19 have been considered but are moot in view of the new ground(s) of rejection in part and unpersuasive in part.

Applicant's arguments with respect to the rejection under 35 U.S.C. § 102 are viewed persuasive, as Yamamoto example formulations do not contain the aliphatic alcohols of instant claims. Accordingly, the rejection has been withdrawn.

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However, examiner views the prior art still renders the claimed invention obvious as the reference teaches a species of the genus of the aliphatic alcohols used in the present composition. Although applicant asserts using the hydroxy compounds produce in the present invention produces "unpredictable benefit", the prior art already teaches the utility of 2-methyl-1-pentanol in enhancing hair conditioning property of quaternary compounds, which is also used by applicant in claim 17. Therefore improved hair conditioning benefit from using the prior art aliphatic alcohol would have been obviously expected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA C. YU/
Primary Examiner, Art Unit 1611